

AN ORDINANCE     **99647**

**APPROVING THE TERMS AND CONDITIONS AND AUTHORIZING THE EXECUTION OF: 1) A CHANGE ORDER IN THE AMOUNT OF \$3,125,000.00 WITH CLARK/JT CONSTRUCTION ON BEHALF OF TODD-FORD AND LEWIS AND LAMBERT, SUBCONTRACTORS ON THE CONVENTION CENTER EXPANSION PROJECT; AND 2) A MUTUAL RELEASE AND SETTLEMENT AGREEMENT IN CONNECTION THEREWITH; AND PROVIDING FOR PAYMENT.**

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**WHEREAS**, the City of San Antonio and Clark Construction/JT Construction Co., a Joint Venture, entered into a \$105,100,000 Construction Agreement dated May 8, 1997 for work on the Henry B. Gonzalez Convention Center Expansion Project Phase IB - New Construction and Renovation (the "Project") after which Clark entered into a Subcontract Agreement with Todd-Ford, Inc. for the installation of the plumbing and HVAC portion of the Project within which Lewis & Lambert was identified as the firm for fabricate and install ductwork on the Project; and

**WHEREAS**, Clark first submitted a claim to the City in the amount of \$4,800,000 for alleged labor inefficiencies and additional compensation for the installation of extra work in the form of steel supports for piping and mechanical equipment for and on behalf of Todd-Ford and Lewis & Lambert; and

**WHEREAS**, the initial claim was reviewed by 3D/I, the City's construction manager for the Project, and based on their conclusions, the City rejected this Claim in its entirety, Clark increased its claim to \$8,700,000 using a different method for analyzing its alleged damages; and

**WHEREAS**, the parties have unsuccessfully engaged in several medication efforts to settle this matter on their own, and therefore, City Council authorized staff to engage in arbitration on August 9, 2004, where the parties presented additional factual and expert evidence an arbitrator, after which he awarded Clark/JT \$3,125,000 of Todd-Ford and Lewis and Lambert, which sum must now be paid by the City of San Antonio; and

**WHEREAS**, this recovery by Clark on behalf of Todd-Ford and Lewis & Lambert is one third of the \$8,700,000 amount sought and does not award the contractor or subcontractors, consultant or attorneys fees, sums sought related to structural steel or the Owner Controlled Insurance Program utilized for this Project, Todd-Ford back charges, or interest on late payment or change orders; **NOW THEREFORE;**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** City Council hereby approves the terms and conditions of Field Alteration #117 in the amount of \$3,125,000.00 in settlement of this claim.

**SECTION 2.** The City Manager or her designee is hereby authorized to execute Field Alteration #117 and any other document necessary to close out the Project.

**SECTION 3.** The amount of \$3,125,000.00 is appropriated in Fund 29-007001, Miscellaneous Special Revenue Funds, Hotel Motel Tax Capital Improvement Plan, in Index Code 931725, entitled "Transfer to Fund 47-00104." The amount of \$3,125,000.00 is authorized to be transferred from Fund 29-007001 to Fund 47-001040.

**SECTION 4.** The budget in Fund 47-001000, Convention Center Expansion Project, shall be revised by increasing Index Code 104836, entitled "Trf Fr 29-007001 (47-001040)" by the amount of \$3,125,000.00.

**SECTION 5.** The amount of \$3,125,000.00 is appropriated in Fund 47-001040, Convention Center Expansion Project, in Index code 472670, entitled "New Construction & Renovation Contract", and is authorized to be encumbered and made payable to Clark/JT Construction Co., Joint Venture, in connection with the Convention Center Expansion Project Field Alteration #117.


**SECTION 6.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific index codes and fund numbers as necessary to carry out the purpose of this Ordinance.

**SECTION 7.** This Ordinance shall take effect immediately upon passage by eight (8) affirmative votes otherwise it will be effective on the tenth (10<sup>th</sup>) day after the passage hereof.

**PASSED AND APPROVED** this 2<sup>nd</sup> day of September, 2004.

  
**MAYOR**  
EDWARD D. GARZA

**ATTEST:**   
City Clerk

**APPROVED AS TO FORM:**   
for City Attorney